



APRIL 1997

North Dakota
Sales and Use Tax Guideline
For:

AUCTIONEERS

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**OFFICE OF
STATE TAX COMMISSIONER**
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AUCTIONEERS

AUCTIONEERS ARE RETAILERS

An auctioneer who makes sales of tangible personal property in the State of North Dakota may be required by the Sales and Use Tax Law to register for a sales and use tax permit as a retailer and to collect and report sales tax on taxable sales. Sales tax may be reported by the auction clerk or the auctioneer, however, in cases where sales tax is not paid, and in the absence of an agreement to the contrary, the auctioneer is liable for any sales taxes due.

TAXABLE SALES

Auctioneers are liable for sales tax if they sell another retailer's resale inventory. However, sales of property owned by nonretailers, such as household or farm auctions, are casual sales and are not subject to sales or use tax provided the name of the nonretailer is disclosed prior to the auction sale. Disclosure occurs when the name of the property owner is made known at or before the time of the auction sale.

If an auctioneer sells tangible personal property for a disclosed nonretailer and resale inventory for another retailer at the same auction, the auctioneer must collect sales tax on the sale of the retailer's resale inventory.

Tangible personal property purchased by the auctioneer and then sold on the auctioneer's own behalf is always subject to sales tax, as the auctioneer is a retailer. When the auctioneer is acting for an unknown or undisclosed person or principal, the auctioneer is deemed to be the owner of the tangible personal property being sold at auction and is required to collect the sales tax on the sale of the property.

SALES FOR RESALE

When an auctioneer sells tangible personal property to a purchaser for resale, the auctioneer must obtain a completed certificate of resale from the purchaser to substantiate the sale as a sale for resale.

FORECLOSURE SALES

The sale at a public auction of tangible personal property secured under the Uniform Commercial Code is not subject to sales tax if the sale is made by a court decree of foreclosure by an officer appointed by the court for that purpose or if the property is bid by the mortgagee. The receipts from other foreclosure sales where goods and chattels are sold at retail are subject to sales tax.

ADDING TAX TO SALES PRICE

An auctioneer responsible for the collection of sales tax may not advertise or hold out to the public that sales tax will not be charged or that it will be absorbed by the retailer, or that, if charged, it will be refunded. The sales tax, if due, must be added to the amount bid.

LOCAL SALES AND USE TAX

Various cities in the state also impose local sales and use taxes, which an auctioneer must collect in addition to the state's sales and use taxes. The city taxes are imposed locally. However, the Office of State Tax Commissioner administers the local sales and use taxes. Please contact the Office of State Tax Commissioner for additional information regarding the city taxes which may affect you.

SALES TO RESIDENTS OF MONTANA

Sales of tangible personal property to residents of Montana are exempt provided (1) the Montana customer is in the state of North Dakota to make a specific purchase and not as a tourist, (2) the sale of taxable goods is fifty dollars or more, and (3) the goods are removed from the state of North Dakota for use exclusively outside this state. "Residents of Montana" means a person maintaining a resident status in Montana for income tax purposes. It also includes Montana partnerships, corporations, and limited liability companies. However, to qualify for exemption, all partners of a partnership must be Montana residents. In the case of a Corporation or LLC, the company must be registered as a domestic Montana Corporation or LLC.

SALES TO RESIDENTS OF CANADA

North Dakota sales and use tax laws provide that a Canadian resident must pay North Dakota sales tax on all purchases, however, the law also provides that in some cases a Canadian resident may apply for a refund of tax paid. The refund is available under the following conditions:

- (1) The Canadian resident was in North Dakota to make a purchase and not as a tourist or temporary resident.
- (2) The goods will be removed from North Dakota within 30 days of purchase and will be used permanently outside North Dakota.
- (3) Individual qualifying purchases (involving one or more items) must equal twenty-five dollars or more.
- (4) The refund request is fifteen dollars or more. (Qualifying purchases may be accumulated for periods not in excess of one calendar year in order to reach the fifteen dollar limit.)
- (5) The Canadian resident applies in writing to the Tax Commissioner on a form prescribed by the Tax Commissioner.

PURCHASES SUBJECT TO USE TAX

Auctioneers purchasing supplies and equipment for their own use in running their business are responsible for the payment of sales or use tax at the time of purchase based upon the cost of the item. If these items are purchased from a business which does not collect North Dakota sales tax, the auctioneer must report the untaxed purchase amount on line four of the sales and use tax report and pay use tax on that total. Examples of taxable purchases include, but are not limited to, office supplies, office equipment, maintenance items, cleaning supplies, delivery equipment, and tools.